

WILFRED S. WOOD
(On Reconsideration)

IBLA 75-306

Decided May 6, 1876

Petition for reconsideration of Wilfred S. Wood, 20 IBLA 284 (1975), affirming the rejection of headquarters site purchase application A-059198.

Previous decision affirmed.

1. Alaska: Headquarters Sites--Alaska: Land Grants and Selections:
Generally--Alaska: Statehood Act-- Applications and Entries:
Generally

A selection of available land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location. A subsequently filed notice of location for a headquarters site has no effect.

APPEARANCES: Timothy G. Middleton, Esq., Wohlforth & Flint, Anchorage, Alaska, for petitioner.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Clarence Wren petitions for reconsideration of this Board's decision styled Wilfred S. Wood, 20 IBLA 284 (1975). The Board held, among other things, that Wood's headquarters site purchase application should be rejected as the land on which the site was located had previously been selected by the State of Alaska pursuant to the provisions of the Alaska Statehood Act. 48 U.S.C. Chapter 2 (1970).

Wren then petitioned for reconsideration of this Board's decision stating that the land on which the site is located was contained within the boundaries of a homestead entry which was a valid entry on the date of the state's selection of the land. Thus, he argued, the land was open to entry when he filed his notice of location, because the state's selection of the land did not attach

prior to his own location of the land, citing Gonzales v. Udall, Civ. No. A-128-68 (D. Alas., filed June 21, 1972).

By order of September 17, 1975, the Board granted Wren's petition for reconsideration and called for production of certain documents which might support the accuracy of Wren's assertions. The Board has now obtained the files relating to the homestead entry, the state selection application, and Wood's headquarters site. In addition, the Board has obtained the field notes of the survey of the headquarters site and other parcels of land in the area. By comparing all of the documents it appears that the headquarters site was never within the boundaries of the homestead. While it is not possible to state definitively that this is so, due to the conflicts among the various pre-survey and post-survey descriptions, it nonetheless appears extremely unlikely that the headquarters site was within the stated boundaries of the original homestead.

The notice of location for the homestead was filed on September 18, 1957, by one Radford T. Shannon (A-038244). The description of the land given in that application is as follows:

The South East Corner (Stake No. 1), thence South West one fourth (1/4) mile to Stake No. 2; thence North West one mile to Stake No. 3; thence one fourth (1/4) mile North East to Stake No. 4; thence one mile South East to the point of beginning Stake No. 1. The North West Corner (Corner No. 4) is located on Squaw Creek on the Wood River Lake Road.

Thus, there was a rectangle running northwest to southeast, 1 mile long and 1/4 mile wide, with corner number 4 at the intersection of Squaw Creek and Wood River Lake Road. 1/

By letter of February 25, 1959, to the Bureau of Land Management (BLM) office in Anchorage, Shannon volunteered to reduce his homestead to 40 acres, the northwesterly 40 acres. However, the hand-sketched map accompanying that letter shows the homestead situated differently than described in the notice of location, and entirely remote from the intersection of Squaw Creek and the Wood River Lake Road.

1/ The description in the application states that "[t]he North West Corner (Corner No. 4) is located on Squaw Creek on the Wood River Lake Road." However, corner number 4 can only be the northeast corner, not the northwest corner. This may be what Shannon meant, for the description on the application is smudged, as if an attempt had been made to write over the original description. Because logically the northeast corner is the one that is corner number 4, we will assume that to be the case.

On May 3, 1961, the State of Alaska filed selection application A-054380 covering all the lands in the area including those in Shannon's homestead and what subsequently became Wood's headquarters site claim. With the exception of valid existing rights and certain enumerated claims, of which Shannon's homestead was one, the land was segregated from further disposition. 43 CFR 2627.4(b), formerly 43 CFR 2222.9-5(b), formerly 43 CFR 76.16; State of Alaska, 73 I.D. 1, 6 (1966), aff'd sub nom. Kalerak v. Udall, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969). On the date of the state selection application, Shannon's homestead, to the extent of the 40 acres then remaining, was a claim which prevented the segregative effect of the state's application from attaching.

On April 12, 1963, the BLM notified Shannon that his homestead had expired on September 17, 1962, the end of the statutory 5-year life of the entry. Subsequently, on May 20, 1963, Shannon made application to purchase a 5-acre homesite described as follows:

Beginning at the junction of Squaw Creek with the Lake Aleknagik Road; thence S. 6 [degrees] W, 300 ft to Corner No. 1, the point of beginning, a dead spruce tree with a metal sign marked A-038244 Cor. #1, thence N. 44 [degrees] W., 330 ft. to Cor. No. 2; thence S. 46 [degrees] W., 660 ft. to Cor. No. 3; thence S. 44 [degrees] E., 330 ft. to Cor. No. 4; thence N. 46 [degrees] E., 660 ft. to Cor. No. 1, the point of beginning. Containing five acres.

The parcel of land is a rectangle having dimensions of 660 feet by 330 feet running from the southwest to the northeast. Considering the various land descriptions together, we draw the following conclusions. It appears that the intersection of Squaw Creek and Wood River Lake Road, which establishes corner number 4 in the original description, is the same point as the intersection of Squaw Creek and Lake Aleknagik Road in the description of the subsequent homesite. The same point is shown in the map accompanying the field report of Wood's headquarters site as the intersection of Squaw Creek and Dillingham/Aleknagik Road. Correlating that point to the survey, it is apparently the point marking corner 5 of lot 3 and corner 1 of lot 8. Based on projections of the original homestead from the descriptions of the various maps it appears that the headquarters site located by Wood was never within the boundaries of the original homestead located by Shannon. Consequently, the land on which the headquarters site is located was segregated from entry by the state's selection application. Wood's subsequent location of his headquarters site simply had no effect.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision rejecting the purchase application is reaffirmed. 2/

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

2/ We note that the Radford T. Shannon file contains a letter dated March 8, 1962, to the BLM office in Anchorage on Shannon's behalf inquiring about the rights to gravel on the land. This may well be relevant to the first issue we discussed in our earlier opinion; that is, was there knowledge of a valuable mineral deposit on the land located by Wood at the time of location?

